REMARKS

Claims 1, 3-6 were pending in the case, however Claims 4-6 were withdrawn by the Office Action. Thus Claims 1 and 3 are currently under consideration in this case.

Claims 1 and 3 stand rejected under 35 U.S.C. Section 103(a) as being unpatentable over EP 0029626 B1 ("Ackerman") in view of EP 0659341 A1 ("Woodburn").

The Office Action alleges that Ackerman provides analogs of the compound of the Claim 1 of the present case. The Office Action states that Applicants' preferred compounds are cypermethrin and deltamethrin. The Office Action alleges that Ackerman lists those compounds as items (b) and (c) respectively in a list appearing on page 2 of the reference - namely as solids or semi-solids, or at least as finely divided , water insoluble normally solid pesticides suspended in water (page 2, line 7,8), or coated over a 1-10 micron carrier (page 2, lines 53-59) of clay or mixes of MgO and SiO2 (Talc) or aluminum oxide and silicon dioxide (kaolinite), in the instantly claimed percentages, reference Example 1, 60% water, 0.8% pyrethroid and 9% formulation auxiliaries.

The Office Action concludes that this is almost the present invention, and implies that Woodburn provides the missing part. The Office Action alleges that Woodburn shows the equivalence of the instantly claimed beta-cyfluthrin with Applicants' preferred pyrethroids cyfluthrin, betacyfluthrin, deltamethrin, permethrin and cypermethrin (page 2, line 55 through page 3, line 17). The Office Action alleges that Woodburn, like Applicants, puts the pyrethroid in a solvent acetone (page 4, line 22) and then evaporates to provide a solid product (page 4, lines 26-28) with formulation auxiliary, PVP. The Office Action adds that inorganic carriers disclosed by Woodburn allegedly include talc, kaolinite, or silica's (page 6, lines 23-26).

The Office Action concludes that it would have been obvious to one skilled in the art to use Ackerman's compositions with allegedly equivalent pyrethroids shown by Woodburn, to include betacyfluthrin. The Office Action concludes that the motivation to choose a particular pyrethroid would be obvious --- choose the compound most effective to the target pest species of concern.

The Office Action states that Applicants' arguments filed April 11, 2003 were fully considered. Applicants note with appreciation that the Section 112 rejections have been overcome, but the Office Action maintains that there is no clear indication of the amount of active and the amount of carrier and the amount of free active. The Office Action notes that Applicants' arguments are for the solid and the differences between cyfluthrin and beta-cyfluthrin, yet, the Office Action alleges, Applicants prefer both, Woodburn allegedly shows

equivalency and an attached CAS search allegedly shows the same compounds as isomers and in a mix the Office Action fails to see any nonobvious or novel distinction as claimed.

Request For Reconsideration of Withdrawal and For Reinstatement of Claim 6

Applicants note at the outset that this case is proceeding under 35 U.S.C. Section 371, and not 35 U.S.C. Section 111(a), and that therefore the proper analysis is not U.S. Patent Office restriction practice, but is rather the unity of invention standard provided under the Patent Cooperation Treaty regulations, as noted in the Manual of Patent Examining Procedure at Section 1893.03(d).

By way of response, Applicants note that the present invention is the national stage of a PCT application. **As such, Applicants are entitled to claims to a compound, to a method of making the compound and a method of using the compound in a single application.** See Administrative Instructions under the PCT, Annex B, Unity of Invention, Part 1 (e) Combinations of Different Categories of Claims, (i).

Thus, Applicants respectfully assert that Claim 6, directed to a method of using the invention, has been improperly withdrawn from consideration by the Examiner in this case.

37 C.F.R. Section 1.499 provides that if an Examiner finds that a national stage application lacks unity of invention as set forth in 37 C.F.R. 1.475, the Examiner may require restriction. 37 C.F.R. Section 1.499 also provides that review of any such requirement is provided under 37 C.F.R. Section 1.143 (request for reconsideration) and 1.144 (petition to the Commissioner, noting that a petition will not be considered if reconsideration of the requirement was not requested). Therefore, pursuant to 37 C.F.R. Section 1.143, Applicants hereby request reconsideration of the requirement for restriction, and reinstatement of Claim 6 to the case.

Response to 35 U.S.C. Section 103(a) Rejections

Claim 1 has been amended to set forth the amount of free active ingredient that is present in the suspension. Support for this amendment may be found on page 3, lines 15-20 and in Examples 1 and 2 in the case.

Applicants appreciate the progress that has been made in this case thanks to Examiner Levy's decision to reopen prosecution of this case and to conduct a telephonic interview with the undersigned on April 10, 2003. Removal of Section 112 rejections and 102(b) have been accomplished, with only Section 103(a) rejections remaining. Applicants believe the foregoing amendments and the following remarks will be sufficient to overcome

the Section 103(a) rejections, rendering the case in condition for allowance.

It may be of assistance to briefly review the problem being addressed by the present invention and the solution to that problem provided by the present invention.

The problem presented in the art is identifying insecticidally active compounds that are both effective initially, but also exhibit excellent residual insecticidal activity. This is not a simple matter as the properties of insecticidal compounds can be highly unpredictable when they are formulated into compositions and any number of additional components are added to make the formulation.

The present inventors have found a particular formulation that provides unexpectedly superior residual action. They have found that when a particular insecticidal compound, namely beta-cyfluthrin, is present in an aqueous suspension which includes **both** beta-cyfluthrin on an inorganic carrier **and** free solid beta-cyfluthrin, such an aqueous suspension has unexpectedly superior residual activity. The examples in the case show this unexpected effect, where it is demonstrated that the same insecticidal activity is obtained with the present invention when it is applied at **half** the "usual" rate, and at the **same** application rate, the residual effect can be enhanced by the factor of 3 or more!

Applicants respectfully urge that none of the cited references addresses this problem, nor its solution. They are directed to different matters entirely as discussed in more detail below, they are not properly combinable, and even if there was some motivation or teaching for the combination, when the references are combined for what they teach one would **still** not be directed to the present invention nor to the problems it is intended to solve. The present invention represents a valuable contribution to the art, as the contributions it provides are both novel and unobvious over the art, and Applicants are entitled to lay claim to this invention.

The specification at page 3, lines 5-6 states that preferred pyrethroids for use in the present invention include permethrin, cypermethrin, deltamethrin, cyfluthrin and beta-cyfluthrin, and the Office Action has used this statement to conclude that Applicant was stating that these active ingredients are interchangeable or equivalent. While this is a logical interpretation, Applicants have since explained in this case that with regard to the pyrethroids, only beta-cyfluthrin has the characteristic of being a solid and not a syrup or liquid like cyfluthrin. As described in detail in the Remarks section of the previous Amendment, since beta-cyfluthrin is a solid, it is able to provide a "solid on solid" combination of active ingredient coated over a substrate, also as described in detail in the previous Amendment. Support for this narrowing of the claims may be found In the instant case, in

the specification at page 3, lines 10-11 where beta-cyfluthrin is identified as a particularly preferred pyrethroid for use in the present invention, and in Examples 1 and 2 in the specification which are both directed to only to beta-cyfluthrin.

Applicants' reasoning to overcome the Section 103 rejection is based on two elements: i) an impermissible combination of the Ackerman and Woodburn references, and ii) the unexpectedly superior residual action of the presently claimed composition. Therefore, Applicants respectfully assert that in light of this narrowing of the claims and the following remarks, the Office Action is not justified in maintaining an obviousness rejection over other pyrethroids, unless it also can show i) that such other pyrethroids are solids and will lead to the solid-on-solid combination of active ingredient on substrate, as is claimed in the claims as presently amended and ii) that such other formulations have the same unexpectedly superior residual action.

Applicants are well aware that in other unrelated patents or applications, the Examiner may find statements of equivalency between different pyrethroids. And, in the context of those other inventions, there may well be equivalency for the purposes of **those** inventions. **But**, in the context of the **present** invention, all pyrethroids are not equivalent, and it is beta-cyfluthrin as disclosed and taught in Examples 1 and 2 in the case, that provides the solid-on-solid active ingredient on substrate combination. Having appropriately narrowed the claims and having provided these remarks, Applicants believe that the obviousness rejection has been overcome.

Applicants would like to once more briefly describe why the present invention is so markedly different from Ackerman and Woodburn and why those two references alone or in combination, do not render the present invention obvious.

First, Applicants remind the Examiner that absent some direction or teaching for the motivation to combine the references, the references are not property combinable.

Applicants respectfully assert that the Office Action has not established why one skilled in the art looking at Ackerman would be motivated to select from all other art Woodburn to combine the two. Applicants respectfully assert that no prima facie case of obviousness has been established by the Office Action because there is no teaching, motivation or suggestion in either Ackerman or Woodburn to combine the references with one another to arrive at the instantly claimed combination. Applicants respectfully assert that it is only through impermissible hindsight using the Applicants' specification as a guide that one would be motivated to combine the references. (MPEP Section 2142 states that "the tendency to resort to "hindsight" based upon applicant's disclosures is often difficult to avoid

due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.")

As noted in MPEP Section 2143.01, obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed Cir 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed Cir. 1992).

Clearly, there is no such teaching, suggestion or motivation shown in either reference in this case. If the Examiner is relying on knowledge generally available to one of ordinary skill in the art, MPEP Section 2144.03 states that if Applicant traverses such an assertion, and Applicants do in this case, the Examiner should cite a reference in support of his or her position. Applicants hereby request such a reference. If the Examiner is relying on facts within his personal knowledge, Applicants respectfully request and are calling for, pursuant to MPEP Section 2144.03 and 37 C.F.R. Section 104, that the Examiner support such facts by an Affidavit.

Applicants respectfully caution the Examiner about making conclusory statements not supported by objective evidence. As set forth in the very recent case of In re Lee, 61 USPQ2d 1430 (CAFC January 18, 2002):

> As applied to the determination of patentability *vel non* when the issue is obviousness, "it is fundamental that rejections under 35 U.S.C. §103 **must be based on evidence** comprehended by the language of that section." *In re Grasselli*, 713 F.2d 731, 739, 218 USPQ 769, 775(Fed. Cir. 1983). The essential factual evidence on the issue of obviousness is set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966) and extensive ensuing precedent. The patent examination process centers on prior art and the analysis thereof. When patentability turns on the question of obviousness, the search for and analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness. *See, e.g., McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1351-52, 60 USPQ2d 1001, 1008(Fed. Cir. 2001) ("the central question is whether there is reason to combine [the] references," a question of fact drawing on the *Graham* factors).
>
> **"The factual inquiry whether to combine references must be thorough and searching."** *Id.* **It must be based on objective evidence of record.** This precedent has been reinforced in myriad decisions, and cannot be dispensed with. *See, e.g., Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25, 56 USPQ2d 1456, 1459 (Fed. Cir. 2000) ("a showing of a suggestion, teaching, or motivation to combine the prior art references is an `essential component of an

obviousness holding'") (quoting *C.R. Bard, Inc., v. M3 Systems, Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232(Fed. Cir. 1998)); *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617(Fed. Cir. 1999) **("Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.");** *In re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637(Fed. Cir. 1998) (there must be some motivation, suggestion, or teaching of the desirability of making the specific combination that was made by the applicant); *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600(Fed. Cir. 1988) ("`teachings of references can be combined *only* if there is some suggestion or incentive to do so.'") (emphasis in original) (quoting *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 USPQ 929, 933(Fed. Cir. 1984)).

The need for specificity pervades this authority. *See, e.g., In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317(Fed. Cir. 2000) **("particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed");** *In re Rouffet*, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459(Fed. Cir. 1998) ("even when the level of skill in the art is high, the Board must identify specifically the principle, known to one of ordinary skill, that suggests the claimed combination.

In other words, the Board must explain the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious."); *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783(Fed. Cir. 1992) **(the examiner can satisfy the burden of showing obviousness of the combination "only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references").**

[2] With respect to Lee's application, neither the examiner nor the Board adequately supported the selection and combination of the Nortrup and Thunderchopper references to render obvious that which Lee described. **The examiner's conclusory statements** that "the demonstration mode is just a programmable feature which can be used in many different device[s] for providing automatic introduction by adding the proper programming software" and that "another motivation would be that the automatic demonstration mode is user friendly and it functions as a tutorial" **do not adequately address the issue of motivation to combine. This factual question of motivation is material to patentability, and could not be resolved on subjective belief and unknown authority. It is improper, in determining whether a person of ordinary skill would have been led to this combination of references, simply to "[use] that which the inventor taught against its teacher."** ***W.L. Gore v. Garlock, Inc.*****, 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983). Thus the Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion.**

....

Conclusory statements such as those here provided do not fulfill the agency's obligation. This court explained in *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697, that

> **"defici ncies of th cited references cannot be remedied by the Board's general conclusions about what is `basic knowledge' or `common sense.'"** The Board's findings must extend to all material facts and must be documented on the record, lest the "haze of so-called expertise" acquire insulation from accountability. "Common knowledge and common sense," even if assumed to derive from the agency's expertise, do not substitute for authority when the law requires authority.
>
> ....
>
> The determination of patentability on the ground of unobviousness is ultimately one of judgment. In furtherance of the judgmental process, the patent examination procedure serves both to find, and to place on the official record, that which has been considered with respect to patentability. The patent examiner and the Board are deemed to have experience in the field of the invention; however, this experience, insofar as applied to the determination of patentability, must be applied from the viewpoint of "the person having ordinary skill in the art to which said subject matter pertains,"the words of section 103. In finding the relevant facts, in assessing the significance of the prior art, and in making the ultimate determination of the issue of obviousness, the examiner and the Board are presumed to act from this viewpoint. **Thus when they rely on what they assert to be general knowledge to negate patentability, that knowledge must be articulated and placed on the record.** The failure to do so is not consistent with either effective administrative procedure or effective judicial review. The board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies.

Emphasis Added.

Thus, Applicants respectfully request a reference that motivates teaches or suggests the combination of Ackerman with Woodburn.

Let us consider briefly what Ackerman and Woodburn would provide to one skilled in the art. One skilled in the art reading Ackerman, would be taught from the title alone, of a water based pesticidal suspension and a process for its manufacture. Upon reading page 2, lines 5-12 of Ackerman, the person skilled in the art would learn that pesticides in the form of emulsifiable concentrates are known and are easy to use, but suffer from being based on an organic normally-aromatic solvent system, and that this can be overcome with a water-based suspension which consists of finely divided water-insoluble normally-solid pesticides suspended in water, known as a "suspension concentrate." It is important to understand at this point, the reader is being taught about solid particles of pesticide suspended in water -- so far there is **no** teaching of a solid active ingredient **coated on a substrate**.

Upon reading further, one skilled in the art learns that many pyrethroids **are liquid or semi-solids** (still no teaching of a solid pyrethroid on a solid carrier) and as such liquids or semi-solids, they do **not** lend themselves to existing as finely-divided particles in water and therefore cannot form the desired suspension concentrate.

Upon reading further, the reader now learns what Ackerman is contributing to the art. Ackerman, at page 2, lines 10-45, now teaches the reader that Ackerman has found a way to create a suspension concentrate for these liquid or semi-solid pyrethroids which cannot exist as finely divided particles, by distributing this liquid or semi-solid pyrethroid on a finely divided solid carrier. It is very important to note here that Ackerman is trying to solve the problem of suspending liquid or semi-solid pyrethroids in water, because if the pyrethroid had simply been a solid itself, such a solid pyrethroid could have easily formed a suspension concentrate by being its own solid particle suspended in water.

Therefore, the whole teaching of Ackerman is directed to the problem of how to form suspension concentrates when the pyrethroid is **not** a solid. Therefore, Ackerman contains no teaching whatsoever, of placing a solid active ingredient on a solid carrier as is disclosed and claimed by the present invention. Ackerman emphasizes this at page 3, lines 45-50 when it states that "the water-based suspension according to the invention differs from conventional suspension concentrates by virtue of its ability to suspend in water **liquid or semi-solid** pesticides and, as has been explained above, this is achieved by adsorbing and/or distributing the pesticide onto a carrier and then suspending in water the carrier bearing the pesticide."

Even looking at the process by which Ackerman makes the pesticide, the reader is taught to make a slurry then wet mill it. The reader is never taught to deposit a solid on a solid as in the present invention.

And, even after all is said and done, Ackerman provides only two working examples, and both of those examples use cypermethrin, **not** the beta-cyfluthrin claimed in the present invention.

Now, here is an important element missing from the Office Action, which is critical in light of the case law described above. Why would one skilled in the art and reading Ackerman, be directed from the universe of **all** other available patents, journal articles or other prior art, be motivated to turn to Woodburn. Applicants respectfully request that the Examiner address this particular point in any future Office Action.

Provided that somehow that this point is overcome, and that the Examiner can make that bridge, and that for some reason the reader is directed to turn to Woodburn, what is the reader now taught? Does Woodburn at least teach placing a solid on a solid active ingredient on a carrier as is taught by the present invention? The answer is clearly no.

Woodburn teaches that in treating animals for pests with an insecticide, the animals are often immersed in a water based solution in a large tank. Where these solutions are

"emulsion concentrates" they often contain a large portion of organic solvent which is a hazard to the animal and the environment. When these solutions are "suspension concentrates", they are often viscous giving rise to handling problems and loss of active ingredient through retention in the packaging. Also, active ingredient is often lost by adsorption to the animals, known as stripping. (Page 2, lines 1-11 of Woodburn).

Thus, says Woodburn at page 2, line 15, it is an object of his invention to provide an insecticidal formulation for use in the treatment of animals which is easy to handle and transport, is highly active and has a low susceptibility to stripping. How does he accomplish that? By providing a solid formulation (note -- **not** a solid on a solid) which comprises a mixture of polyvinylpyrrolidone and a pyrethroid insecticide for use in the treatment of animals. At page 2, line 55- page 3, line 17 Woodburn teaches that a long list of pyrethroids can be used in his invention, which list included liquid and semi-solid pyrethroids. Woodburn does not teach limiting the pyrethroid to the solid beta-cyfluthrin as in the present invention.

Does Woodburn at least teach **coating** the polyvinylpyrrolidone with the pyrethroid? Again, the answer is no. Woodburn teaches dissolving the polyvinylpyrrolidone and the pyrethroid in a solvent, and removal of the solvent to provide a solid formulation which may be pressed into forms, such as tablets or granules or ground to create particles. (Woodburn at page 4, lines 16-39).

In its preferred formulation, Woodburn would co-extrude the pyrethroid with the polyvinylpyrrolidone, cool it until brittle, then mill it. See Woodburn page 4, lines 39 through page 5, line 20. The co-extrusion process is not a coating process as is used in the present invention. In co-extrusion the polyvinylpyrrolidone and the pyrethroid exist side by side, it is not a coating of pyrethroid on a polyvinylpyrrolidone substrate.

Does Woodburn even recognize the use of solid pyrethroid? No. At page 5, lines 21-30, Woodburn discloses that any pyrethroid can be formulated using the co-extrusion process, provided it dissolves in polyvinylpyrrolidone to form a solid solution and does not chemically decompose during extrusion. He describes "fusion" points for the extrusion process for the pyrethroid and the polyvinylpyrrolidone so that the extraction is carried about above the fusion point, allowing the two to fuse during the extruding process. See also, page 5, lines 42-43.

To the extent Woodburn describes talcs, clays and the like, he describes it as a "filler" (page 6, lines 23-39) and not as a substrate, and adds that where the pyrethroid/polyvinyl-pyrrolidone formulation is to include other ingredients, such ingredients are preferably added **after** the co-extrusion (page 6, line 39), so the "filler" can not possibly have served as any

type of substrate, since the co-extrusion process was complete before the filler was even added.

Why one skilled in the art reading Ackerman for teaching how to suspend a liquid or semi-liquid cypermethrin on a carrier would turn to Woodburn's teaching of how to treat animals by blending polyvinylpyrrolidone and any type of pyrethroid at all -- liquid, solid or semi-solid -- is not at all clear in this case, but even if one were so motivated, they would still not find any teaching of placing a solid active ingredient as a coating on a solid substrate as in the present invention from Woodburn. Applicants respectfully suggest, the leap here is simply too large. It is only through impermissible hindsight, that one first armed with the present invention, might be motivated in hindsight to try to combine these references to arrive at the present invention. One skilled in the art not having the benefit of the present invention would surely not have been motivated to combine the references, and even if they were, they would not have arrived at the present invention.

Starting with Ackerman and combining it with Woodburn, one would have, for reasons unknown, added polyvinylpyrrolidone to liquid or semi-solid **cypermethrin** that Ackerman placed on a finely divided solid carrier, and would not have selected beta-cyfluthrin for any reason.

Starting with Woodburn and combining it with Ackerman one would arrive at a co-extrusion of either any pyrethroid (solid, liquid or semi-solid with no distinction from Woodburn) or **cypermethrin** in particular (from Ackerman) with Woodburn's polyvinylpyrrolidone, where the pyrethroid is fused with the polyvinylpyrrolidone during the extrusion process, and Woodburn would teach not to put any of it on a carrier, but to simply add clays, talcs and the like, as "fillers" after the extruding had taken place.

Neither of the foregoing are the present invention as set forth in the claims.

In conclusion, the present invention is not rendered obvious over the references. There is no teaching of a solid on a solid beta-cyfluthrin on a carrier, nor the teaching of excess free active ingredient as in the present invention. Further, the claims of the present invention have been amended to expressly include the free active ingredient and to expressly exclude polyvinylpyrrolidone, further separating the present claims from Ackerman and Woodburn.

The point of novelty of the present invention, and that which has been heretofore unknown, is to form an aqueous suspension of an insecticidally active compound comprising the beta-cyfluthrin (a solid), **coated on the surface of another solid** (e.g. an inorganic carrier, such as those identified in the claims).

The problem facing the art is how to make these insecticide suspensions last a long time after application to a surface to continue to control insects.

The present inventors have found that when beta-cyfluthrin is coated onto an inorganic carrier in an aqueous suspension, when that suspension is applied to a surface, its insect-controlling capabilities are unexpectedly extended, particularly over mere particles of beta-cyfluthrin suspended in an aqueous suspension (Example A). It should be noted that the same results are obtained using only 50% application rate, and at the same application rate, the residual effect (on PVC for example) is enhanced by the factor of 3 or more. Applicants' claims are directed to beta-cyfluthrin, which as pointed out above is a **solid**, which is to be coated onto **another solid**, namely the inorganic carrier, with Applicants having pointed out in the specification at page 3, lines 10-11 that beta-cyfluthrin is a very particularly preferred pyrethroid and having provided Examples 1 and 2 illustrating the present invention.

Finally, Applicants would like to correct one statement made in the Office Action. The Office Action stated that beta-cyfluthrin was selected simply as the compound most effective to the target pest species of concern. Clearly here, the Office Action misses a most important point. Beta-cyfluthrin is not selected because of the pest involved, but because it has the desired ability to provided a solid on a solid (solid active on a solid substrate), to give the long lasting residual effect that is the goal of the present invention. This is an important difference because the characterization in the Office Action does not recognize the proper motivation for the selection of beta-cyfluthrin in this case.

For all of the foregoing reasons, Applicants believe the claims of the present invention are novel and unobvious over the art of record. Review and reconsideration of the claims and allowance thereof are respectfully requested.

If any issues remain, Applicants respectfully invite and in fact respectfully urge the Examiner to telephone the undersigned before issuing any additional Office Actions in the hope that such issues might thereby be resolved.

Respectfully submitted,

By _____
Raymond J. Harmuth
Attorney for Applicants
Reg. No. 33,896

Bayer CropScience LP
100 Bayer Road
Pittsburgh, Pennsylvania 15205-9741
(412) 777-3916
FACSIMILE PHONE NUMBER:
(412) 777-3902